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"actually bought" were limited to the latter, and did not include the manufactured goods, though the animals from which such goods were made had been purchased by the company for slaughter, manufacture, and sale.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 30-35; Dec. Dig. § 15.\* 9 Va.-W. Va. Enc. Dig. 313.]

Error to Corporation Court of Roanoke.

Morris & Co., Incorporated, was convicted of fraudulently procuring a license to do business as a merchant, and it brings error. Reversed.

*Hall & Woods*, of Roanoke, and *Eppa Hunton, Jr.*, of Richmond, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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DARBY COAL MINING CO. *v.* SHOOP.

Nov. 12, 1914.

[83 S. E. 412.]

**1. Master and Servant (§§ 286, 288, 289\*)—Injuries to Servant—Actions—Jury Questions.**—In an action by a miner, injured by a fall of slate, the questions whether the injury was the result of defendant's negligence, or whether plaintiff was guilty of contributory negligence, or assumed the risk, held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1001, 1006, 1008, 1010-1015, 1017-1033, 1036-1042, 1044, 1046-1050, 1068-1090, 1092-1132; Dec. Dig. §§ 286, 288, 289.\* 9 Va.-W. Va. Enc. Dig. 726.]

**2. Master and Servant (§§ 101, 102\*)—Injuries to Servant—"Negligence"—"Actionable Negligence."**—"Negligence" is a failure to observe that degree of care which the circumstances require, and any failure on the part of the master to exercise that reasonable degree of care required is "actionable negligence."

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 174, 178-184, 192; Dec. Dig. §§ 101, 102.\* 9 Va.-W. Va. Enc. Dig. 673.]

For other definitions, see Words and Phrases, First and Second Series, Actionable Negligence; Negligence.]

**3. Trial (§ 296\*)—Instructions—Cure of Error.**—Where, in other instructions, the court charged that plaintiff, who was injured by a fall of slate in a coal mine, was guilty of contributory negligence, if it was his duty to have inspected the roof and the inspection would have disclosed the danger, error cannot be predicated upon instructions on the duty of the master to have inspected the roof, which

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

did not inform the jury of the alternative in case the duty was upon plaintiff, for the instructions must be considered as a whole.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.\* 7 Va.-W. Va. Enc. Dig. 743.]

**4. Master and Servant (§ 293\*)—Injuries to Servant—Actions—Instructions.**—In an action by a miner, injured by a fall of slate in a room in which he was directed to work, though defendant had intended to abandon it, coal blocking the entrance having been removed, an instruction that, if defendant's superintendent knew or should have known that the roof was liable to fall, it was his duty to exercise reasonable care to support it, or to warn employees of the danger, and that if plaintiff was directed to work in such room defendant was not excused from his duty to use all reasonable care, is not erroneous in disregarding the right of the mineowner to close part of the workings, or its mine, without placing them in a safe condition.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1148-1156, 1158-1160; Dec. Dig. § 293.\* 9 Va.-W. Va. Enc. Dig. 673.]

**5. Appeal and Error (§ 1052\*)—Review—Harmless Error.**—Where an injured servant was awarded only \$3,000 for injuries of a permanent character and the defendant did not complain of the amount, the improper admission of evidence as to the number of the servant's family is not reversible error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4171-4177; Dec. Dig. § 1052.\* 1 Va.-W. Va. Enc. Dig. 592.]

Error to Circuit Court, Lee County.

Action by W. H. Shoop against the Darby Coal Mining Company. There was judgment for plaintiff and defendant brings error. Affirmed.

*R. T. Irvine* and *Bullitt & Chalkley*, all of Big Stone Gap, for plaintiff in error.

*E. M. Fulton*, of Wise, and *C. R. McCorkle*, of Appalachia, for defendant in error.

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LINKOUS *v.* STEVENS et al.

Nov. 12, 1914.

[83 S. E. 417.]

**1. Judgment (§ 707\*)—Conclusiveness—Persons Concluded.**—A testator died leaving two parcels of land, the smaller of which all

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.